

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PATRICIA JENEE COLEMAN,	§	
<i>Plaintiff,</i>	§	
	§	
VS.	§	CIVIL ACTION NO. 1:20-cv-1161
	§	
FIESTA MART, L.L.C., D/B/A	§	
FIESTA MART #64,	§	
<i>Defendant.</i>	§	

DEFENDANT'S NOTICE OF REMOVAL

Defendant Fiesta Mart, L.L.C. ("Defendant") files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446, and respectfully shows:

Commencement and Service

1. On September 25, 2020, Patricia Jene Coleman ("Plaintiff") commenced this action by filing an Original Petition ("State Court Petition") in the 419th Judicial District Court, Travis County, Texas. The case is styled Cause No. D-1-GN-20-005254; *Patricia Jene Coleman vs. Fiesta Mart, L.L.C. D/B/A Fiesta Mart #64*.¹

2. The lawsuit was first served on Defendant on October 28, 2020.²

3. Defendant timely answered in state court on November 17, 2020.

4. This Notice of Removal is filed within thirty days of the receipt of service of process and is therefore considered timely pursuant to 28 U.S.C. § 1446(b). This Notice of Removal is also filed within one year of the commencement of this action and is thus timely pursuant to 28 U.S.C. § 1446(c).

¹ See *Exhibit C*, Plaintiff's Original Petition.

² See *Exhibit D*, Citation and Return of Service.

Grounds for Removal

5. Defendant is entitled to remove the state court action to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 because this action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with diverse citizenship.

Diversity of Citizenship

6. There is complete diversity of citizenship between Plaintiff and Defendant.

7. Plaintiff is a citizen of Texas.³

8. Defendant Fiesta Mart, L.L.C. is a limited liability company organized under the laws of Texas and its sole member is Bodega Latina Corp., a Delaware corporation with its principal place of business, or its “nerve center,” in California.⁴ Defendant’s citizenship as an LLC is determined by the citizenship of its members.⁵ A corporation is deemed to be a “citizen” of the state where it maintains its principal place of business (its “nerve center”) and the state of its incorporation.⁶ Therefore, Defendant is a citizen of Delaware and California.

Amount in Controversy

9. This is a personal injury case with well over \$75,000 in controversy at the time of this removal. Per her Petition, Plaintiff pleads monetary relief in an

³ See **Exhibit C**, Plaintiff’s Original Petition at ¶ 2.

⁴ See **Exhibit F**, Affidavit of Michael Saltzstein.

⁵ See e.g., *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

⁶ See, 28 U.S.C § 1332(c)(1); see also, *Hertz Corp. v. Friend*, 559 U.S. 77, 130 S. Ct. 1181, 1185-86 (2010).

amount more than \$1,000,000, pursuant to Rule 47(c) of the Texas Rules of Civil Procedure.⁷

Venue

10. Venue lies in the Western District of Texas, Austin Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because Plaintiff filed the action in this judicial district and division.

Notice

11. Defendant will give notice of the filing of this Notice of Removal to all parties of record pursuant to 28 U.S.C. § 1446(d). Defendant will also file with the clerk of the state court and will serve upon Plaintiff's counsel, a notice of the filing of this Notice of Removal.

Exhibits to Notice of Removal

12. In support of this Notice of Removal and pursuant to 28 U.S.C. §1446(a), true and correct copies of the following documents are attached to this Notice as corresponding lettered exhibits:

- A. Index of documents filed in Cause No. D-1-GN-20-005254; *Patricia Jene Coleman v. Fiesta Mart, L.L.C.*, in the 419th Judicial District Court, Travis County, Texas.– ***Exhibit A***
- B. Docket Sheet for Cause No. D-1-GN-20-005254; *Patricia Jene Coleman v. Fiesta Mart, L.L.C.*, in the 419th Judicial District Court, Travis County, Texas. – ***Exhibit B***
- C. Plaintiff's Original Petition, filed on September 25, 2020, Cause No. D-1-GN-20-005254; *Patricia Jene Coleman v. Fiesta Mart, L.L.C.*, in the 419th Judicial District Court, Travis County, Texas. – ***Exhibit C***

⁷ See ***Exhibit C***, Plaintiff's Original Petition at ¶ 24.

- D. Citation Issued on October 14, 2020; Served on October 28, 2020 and Return of Service, filed October 29, 2020, Cause No. D-1-GN-20-005254; *Patricia Jenee Coleman v. Fiesta Mart, L.L.C.*, in the 419th Judicial District Court, Travis County, Texas. – ***Exhibit D***
- E. Defendant’s Original Answer and Affirmative Defenses, filed November 16, 2020, Cause No. D-1-GN-20-005254; *Patricia Jenee Coleman v. Fiesta Mart, L.L.C.*, in the 419th Judicial District Court, Travis County, Texas. – ***Exhibit E***
- F. Affidavit of Michael Saltzstein. – ***Exhibit F***
- G. Certificate of Interested Persons – ***Exhibit G***
- H. Notice of Filing Removal in State Court – ***Exhibit H***

Prayer

WHEREFORE, Defendant, pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. § 1446, removes this action from the District Court of Travis County, Texas to this Court.

Respectfully submitted,

By: /s/ Karl Seelbach
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*ATTORNEYS FOR DEFENDANT
FIESTA MART, L.L.C.*



Doyle & Seelbach

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of the above and foregoing document has been served by electronic delivery and facsimile to counsel identified below on this, the 23rd day of November, 2020.

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